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In The

Supreme Court of the United States

October Term, 1990

THE SERBIAN EASTERN ORTHODOX DIOCESE FOR THE UNITED STATES OF AMERICA AND CANADA, a Religious Body, et al.,

Petitioners,

v.

ST. SAVA MISSION CORPORATION,

Respondent.

Petition For A Writ Of Certiorari To The Court Of Appeal Of The State Of California

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

This is not an appeal of "constitutional dimension" which provides this Court with "a unique opportunity to clarify the obligations of our state courts under the Full Faith And Credit Clause and the doctrines of res judicata and collateral estoppel" as suggested by petitioners (Petition For Writ of Certiorari, p.16). Instead, this is merely an appeal of a garden variety summary judgment where the California Court of Appeal thoroughly reviewed the extensive record presented to the trial court when the trial court admitted it had failed to do so itself. Finding numerous triable issues of material fact, the Court of Appeal reversed the improper summary judgment and remanded for trial on the merits.

Thus, the question presented for review is more accurately characterized as follows:

Must the courts of California accord full faith and credit to the final adjudications of Illinois courts and this Court in a dispute over control of the institutions and assets of The Serbian Orthodox Church in this country with respect to respondent St. Sava Mission Corporation, a California nonprofit corporation, and its California real property held in fee simple (1) when the Illinois courts could exercise neither personal jurisdiction over the St. Sava nor *in rem* jurisdiction over its California real property, (2) when neither the St. Sava nor its California real property are identified in any of the pleadings in Illinois as subject to disposition in that litigation, (3) when St. Sava is not named as a party to the litigation in Illinois, (4) when St. Sava is not served with process in the Illinois litigation, (5) when St. Sava did not appear in the Illinois

QUESTION PRESENTED – Continued

litigation, (6) when St. Sava is not identified in the caption of the Illinois pleadings as being represented by any named party to the litigation in Illinois as appearing in a disclosed and representative capacity on its behalf, (7) when the only interests of Bishop Dionisije, the one individual party appearing in Illinois with whom petitioners claim St. Sava is in privity and who is claimed to have actually and efficiently represented St. Sava's interests, were not to assert St. Sava's autonomy in Illinois but instead were to retain his position as bishop and to keep his diocesan structure intact, and (8) when the interests of St. Sava to establish its continued independence and autonomy from petitioners, which interests are claimed to have been actually and efficiently represented in Illinois, were not even raised for the first time until his fourth and final appeal, well after it was too late for substantive consideration on the merits?

The Court of Appeal correctly held that St. Sava was an absent indispensable party to the litigation in Illinois and that many issues of disputed material facts precluded, as a matter of law, a finding on a motion for summary judgment that the interests of St. Sava were actually and efficiently represented in Illinois by Bishop Dionisije.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF AUTHORITIES v

STATEMENT OF THE CASE 1

A. Definition of Terms 1

B. History of St. Sava and the Jackson Property ... 3

1. Purchase of Jackson Property 3

2. Onset of the Schism and the Illinois Litigation 7

3. Initiation of Proceedings in Trial Court ... 10

4. Trial Court Ruling on Summary Judgment .. 11

REASONS FOR DENYING THE WRIT 13

I.

A REVIEW OF THE HISTORY OF THE ILLINOIS LITIGATION DEMONSTRATES THAT ST. SAVA WAS AN ABSENT INDISPENSABLE PARTY AND THAT ST. SAVA'S INTERESTS IN ESTABLISHING ITS CONTINUED AUTONOMY AND ENTITLEMENT TO RETAIN THE JACKSON PROPERTY WERE NOT ACTUALLY AND EFFICIENTLY REPRESENTED IN ILLINOIS, THEREBY PRECLUDING AS A MATTER OF LAW APPLICATION OF THE PRINCIPLES OF COLLATERAL ESTOPPEL AND RES JUDICATA 13

TABLE OF CONTENTS

Page

II.

THE COURT OF APPEAL CORRECTLY INTERPRETED THE DECISIONS OF THIS COURT AND THE ILLINOIS SUPREME COURT 18

A. This Court's Statement That Resolution Of The Religious Disputes Also Determines Control Of The Diocesan Properties Is Limited To The Two Illinois Religious Corporations Which Were Parties To The Illinois Litigation And Which Were Incorporated Under The Hierarchical Provisions Of The Illinois Religious Corporations Act..... 18

B. No Witness in the Illinois Litigation Testified as a Representative of St. Sava 23

III.

THE REMAINING ISSUES CONFIRM THE CORRECTNESS OF THE COURT OF APPEAL DECISION 23

CONCLUSION 25

TABLE OF AUTHORITIES

Page

Cases

Cypress Grove Townhouse Project Com. v. Covenant Mutual Insurance Co., (1987) 197 Cal.App.3d 197 4

Martin v. Wilks, (1989) 490 U.S. ___, 104 L.Ed.2d 835, 109 S.Ct. 2180 14

Presbytery of Riverside v. Community Church of Palm Springs (1979) 89 Cal.App.3d 910 22

Protestant Episcopal Church v. Barker, (1981) 115 Cal.App.3d 599 22

Serbian Eastern Orthodox Diocese, Etc. v. Milivojevich, (1975) 60 Ill.2d 477, 328 N.E.2d 268 .....2, 14

Serbian Eastern Orthodox Diocese v. Milivojevich, (1976) 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372 ..3, 15

Serbian Eastern Orthodox Diocese v. Milivojevich, (1979) 74 Ill.2d 574, 25 Ill.Dec.629, 387 N.E.2d 285 17

Serbian Eastern Orthodox Diocese v. Ocokoljich, (1966) 72 Ill.App.2d 444, 219 N.E.2d 343 .....14, 19

Walter E. Heller Western, Inc. v. Tecrim Corp., (1987) 196 Cal.App.3d, 156 4

Zeilman v. County of Kern, (1985) 168 Cal.App.3d 1174 4

Other Authorities

California Code of Civil Procedure

§ 437c 4, 11, 12, 13, 26

TABLE OF AUTHORITIES

Page

California Corporations Code

§ 9203 ..... 6, 22

§ 9802 ..... 6, 22

Rules of the Supreme Court of the United States

Rule 10 ..... 1, 13, 26

STATEMENT OF THE CASE

A reading of petitioners' Petition For Writ of Certiorari ("Petition") may result in the erroneous conclusion that this appeal follows a full trial on the merits in which every major factual issue was subject to conflicting evidence. It does not. Instead, this appeal is from a garden variety summary judgment on the limited issue of "privity" in an action in California to enforce a judgment issued in Illinois.

St. Sava submits that the California Court of Appeal was correct in holding that it was an absent indispensable party to the litigation in Illinois. St. Sava further submits that the California Court of Appeal was correct in deciding that the presence of many issues of disputed material facts precluded, as a matter of law, a finding on a motion for summary judgment that the interests of St. Sava to establish its continued separateness and autonomy from the Serbian Eastern Orthodox Dioceses were actually and efficiently represented in Illinois by Bishop Dionisije, whose only material interests were to save his job as bishop and to keep his diocesan structure intact. Since there exist no special or important reasons for review under Rule 10, the Petition For Writ of Certiorari should be denied.

A. Definition of Terms

For purposes of brevity and clarity throughout this Brief, the terms listed below shall have the following meanings unless otherwise indicated in the body of this Opposition Brief:

1. "St. Sava" shall mean respondent St. Sava Mission Corporation, formerly known as St. Sava Church and Educational Mission of The Serbian Orthodox Diocese for the United States of America and Canada;

2. "Jackson Property" shall mean approximately 173 acres of real property located in Amador County, California, legal and beneficial title to which is held exclusively in the name of St. Sava;

3. "Mother Church" shall mean petitioners, The Serbian Eastern Orthodox Church in the United States of America and Canada, a religious body, as well as The Serbian Eastern Orthodox Church whose Patriarchal See is located in Belgrade, Yugoslavia;

4. "Diocese" shall mean petitioners Western American Diocese, Mid-Western American Diocese, Eastern American and Canadian Diocese, as well as their predecessor prior to reorganization in 1963, the Serbian Eastern Orthodox Diocese for the United States of American and Canada;

5. "Illinois Trial Court" shall mean the Circuit Court of the Nineteenth Judicial District, Lake County, Illinois, and The Circuit Court of Lake County, Illinois, County Department, Chancery Division;

6. "Illinois Litigation" shall mean the matter entitled *The Serbian Eastern Orthodox Diocese of the United States of America and Canada, a religious body, et al. v. Dionisije Milivojevich, et al.*, Action No. 63-1644 Consolidated with Action No. 63-2312, which was litigated in the Illinois Trial Court;

7. "Illinois Final Judgment" shall mean the Final Judgment of the Illinois trial court filed February 22, 1978; and

8. "Supreme Court Decision" shall mean the June 21, 1976, decision of this Court in *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 49 L.Ed.2d, 151, 96 S.Ct. 2372.

B. History of St. Sava and the Jackson Property

St. Sava submits that a review of its history and the history of the Illinois Litigation warrants the conclusion, as a matter of law, that (1) the absence of either *in personam* jurisdiction over St. Sava or *in rem* jurisdiction over the Jackson Property precludes full faith and credit recognition and enforcement of the Illinois Final Judgment, (2) St. Sava was an absent indispensable party to the Illinois Litigation and (3) the Court of Appeal was correct that the existence of numerous disputed facts relevant to the issues of privity and representation and to whether Bishop Dionisije actually and efficiently represented St. Sava's interests in Illinois precluded summary judgment in favor of petitioners.

1. Purchase of Jackson Property

Beginning in the late 1950s and continuing through the early 1960s, representatives from congregations of numerous Serbian Orthodox Churches in California and elsewhere in the West studied various locations for the

establishment of a regional center.[1] They intended this center as a church summer camp for children, as a regional meeting place for Serbian-Americans in California and throughout the West, and possibly as a retirement home location [C.T. 1902, ¶¶ 4-6; C.T. 1938, ¶ 5].[2]

Due to extraordinary fund raising efforts, the residents of Jackson and environs offered a substantial contribution contingent on the camp being located in Jackson. However, due to fears that newly arrived Serbian immigrants from Yugoslavia would be disruptive and attempt to take control of the camp from outside the area, and that communist influences in Yugoslavia would

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[1] These matters are taken mostly from the pleadings and the declarations submitted to the trial court by St. Sava on the cross-motions for summary judgment. Since, in granting summary judgment the trial court did not (1) identify any factual issues which were in material dispute (C.C.P. § 437c(g)) or (2) sustain any of petitioners' evidentiary objections (C.C.P. § 437c(c)), St. Sava is entitled to presume that the trial court found these facts to be true and supported by competent evidence. For purposes of the appeal from a summary judgment, facts presented by appellant must be accepted as true. *Cypress Grove Townhouse Project Com. v. Covenant Mutual Insurance Co.* (1987) 197 Cal.App.3d 197, 200; *Walter E. Heller Western, Inc. v. Tecrim Corp.* (1987) 196 Cal.App.3d 149, 156; *Zeilman v. County of Kern* (1985) 168 Cal.App.3d 1174, 1179.

[2] The parties' Stipulation For Use of Original Superior Court File in Lieu of Clerk's Transcript was filed on January 19, 1988. The Chronological Index For Original File in Lieu of Clerk's Transcript identifies only the first page number of each document in the record. Unless otherwise specified, the references herein to the clerk's transcript, i.e., C.T., will be to the first page of the referenced pleading or other document.

seek to exert similar control locally, the Jackson contribution was offered on the express condition that the property not be owned or controlled by the Mother Church or the Diocese, but instead by an autonomous California nonprofit corporation [C.T. 1902, ¶ 11; C.T. 1938, ¶¶ 10, 13, 15; C.T. 2211, ¶ 5].

The Jackson site was thereupon selected. Representatives of the Jackson group entered into agreements with the sellers and agreed upon a price. Just prior to the opening of escrow, however, Bishop Dionisije, the presiding religious authority on matters of doctrine and faith and the spiritual leader of the Diocese, on his own and without prior authorization from Diocesan representatives, entered into an arrangement with the sellers at a higher price and took title to the Jackson Property in the name of the Diocese by deed recorded on May 8, 1961 [C.T. 2006, Exhibit A]. These unauthorized actions of Bishop Dionisije eventually were reversed.

In 1961 and 1962, the temporal affairs of the Diocese were administered by the Diocesan Council in Chicago, a group of approximately two dozen Serbian-Americans from throughout the United States. Operating within the Diocesan Council was the Executive Board. Although the Bishop was the final authority on matters of faith, doctrine and related ecclesiastical issues, the Diocesan Council and its Executive Board constituted the final authority on all temporal matters, including the purchase of real property [C.T. 1919, 2275 and 2281, 12].

A year of protests to the Diocesan Council over the unauthorized actions of Bishop Dionisije culminated in a meeting of the Executive Board of the Diocesan Council

held on June 14, 1962, in Chicago [C.T. 1919, 2275 and 2281]. Less than two weeks earlier, and in anticipation of this meeting of the Executive Board, the Jackson group formed St. Sava as a California nonprofit corporation. St. Sava filed its Articles of Incorporation with the California Secretary of State on June 2, 1962 [C.T. 2006, Exhibit B]. Consistent with the intention to retain local autonomy and avoid temporal control by the Diocese which was headquartered near Chicago, Illinois, the Articles of Incorporation excluded any reference to California Corporations Code Sections 9203 and 9802, which provided the alternative of incorporation of a local nonprofit body subordinate to a national nonprofit body [C.T. 1902, ¶ 11 and 20; C.T. 1938, ¶ 12].

As a result of a vote taken at the June 14, 1962, meeting, the Executive Board of the Diocesan Council ordered Bishop Dionisije to convey the Jackson Property to the California group in order to relieve the Diocese of the financial burden represented by the purchase [C.T. 1938, Exhibit B and C.T. 1919, 2275 and 2281, Exhibits A and B]. In compliance with this directive of the Executive Board of the Diocesan Council, the Jackson Property was conveyed to St. Sava by Grant Deed recorded on December 4, 1962 [C.T. 2006, Exhibit C]. Of significance to the present action is the fact that both the May 8, 1961 deed from the sellers to the Diocese and the December 4, 1962 deed from the Diocese to St. Sava are conventional grant deeds whereby title to the Jackson Property was conveyed in fee and without any language in the deeds establishing a trust or a reservation of rights in favor of the grantors or in favor of any other parties.

Immediately following the conveyance of the Jackson Property to St. Sava, a building program began. St. Sava assumed all financial obligations for the property and eventually paid the full purchase price and retired the mortgage. As a result of ongoing fund raising efforts in the following years, children's dormitories, a meeting hall, a swimming pool and various other improvements were added. The Jackson Property was operated as a summer camp and regional meeting facility, and continues to operate as such to this day [C.T. 1902, ¶ 25].

2. Onset of the Schism and the Illinois Litigation

In 1963, Mother Church initiated certain actions in Yugoslavia which resulted in the defrockment and removal of Bishop Dionisije. Additionally, Mother Church reorganized what had previously been one Diocese administered by Bishop Dionisije and which covered the entire territory of the United States of America and Canada by dividing it into three regional dioceses to be administered by three new bishops [C.T. 221, ¶¶ 13-14]. As a result, Bishop Dionisije commenced the Illinois Litigation in the Illinois Trial Court, challenging the propriety of the actions by Mother Church in defrocking him and in reorganizing the administrative structure of the Diocese. Mother Church and the Diocese filed a separate action against Bishop Dionisije in the Illinois Trial Court, and the two actions were consolidated for trial [the Illinois Trial Court pleadings are located in C.T. 2006, Exhibits O-S].

In recognition of the decision of the Executive Board of the Diocesan Council on June 14, 1962, to dispose of

the Jackson Property as a Diocesan asset by conveyance to St. Sava, *neither St. Sava nor the Jackson Property were involved in the Illinois Litigation and thus St. Sava was not named as a party, was not served with process, was not mentioned in the pleadings and did not enter an appearance. Of significance is that neither control of St. Sava nor of the Jackson Property is mentioned anywhere in the pleadings in the Illinois Litigation as subject to disposition in the litigation. The captions of the Illinois pleadings confirm that none of the parties who appeared in the Illinois Litigation did so in disclosed representative capacities either on behalf of St. Sava or as persons who controlled the Jackson Property.*

In 1971, eight years after the commencement of the Illinois Litigation, plaintiffs in that action (the Diocese herein) for still unexplained reasons recorded a lis pendens with respect to the Illinois Litigation which refers to the Jackson Property [C.T. 2006, Exhibit I]. Nonetheless, although the lengthy trial was still two years away, no attempts were made to amend the Illinois pleadings to specifically name or to seek relief against St. Sava or the Jackson Property or to serve or otherwise join St. Sava as a party to the Illinois Litigation.

During the pendency of the Illinois Litigation, St. Sava continued to operate as an autonomous California nonprofit corporation [C.T. 1575 and 3013-3037]. In 1963 and 1964, adherents loyal to the Diocese following the schism withdrew from further participation in the affairs of St. Sava and discontinued all financial support [C.T. 1902, ¶¶ 14, 21 and Exhibit A]. St. Sava was not affiliated with either side of the litigation or the schism and had not been from the beginning, although some individual

members of St. Sava chose personal affiliations with one faction or the other [C.T. 1902, ¶ 14 and C.T. 2211, ¶ 2].

On March 3, 1974, St. Sava amended its Articles of Incorporation to document the change from its former to its present corporate name [C.T. 2006, Exhibit F]. No substantive changes were made by the amendment to the Articles of Incorporation in 1974.

Following decisions by the Illinois Court of Appeal in 1966 [C.T. 2006, Exhibit D] and the Illinois Supreme Court in 1975 [C.T. 2006, Exhibit E], the Illinois Litigation was appealed to this Court, which rendered a decision thereon in 1976 [426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372]. In the Supreme Court Decision, this Court ruled that the civil courts of Illinois improperly inquired into religious and ecclesiastical decisions of the Diocese and Mother Church in violation of the First Amendment to the Constitution of the United States. This Court concluded that, although civil courts may properly determine disputes concerning ownership of church property by applying neutral principles of law, civil courts may not determine the propriety of ecclesiastical questions involving matters of church faith or polity.

In 1978, upon remand the Illinois Trial Court entered the Illinois Final Judgment referring to St. Sava and the Jackson Property [C.T. 2006, Exhibit H]. On subsequent appeal to the Illinois Supreme Court in 1979, that court held that nothing in the Illinois Final Judgment of the Illinois Trial Court required action by St. Sava since neither St. Sava nor the Jackson Property were before the Illinois Trial Court and since the pleadings did not seek

relief against St. Sava or the Jackson Property [C.T. 2006, Exhibit J].

3. Initiation of Proceedings in California Trial Court

Despite the 1979 decision of the Illinois Supreme Court excluding St. Sava and the Jackson Property from the Illinois Final Judgment, Mother Church and the Diocese nevertheless initiated contempt proceedings in the Illinois Trial Court against directors of St. Sava. The Diocese alleged that the refusal of St. Sava's directors to turn over control of the Jackson Property to the Diocese constituted contempt of the Illinois Final Judgment [C.T. 1828, Exhibit A]. The Response of St. Sava representatives specifically challenged the jurisdiction of Illinois courts over St. Sava and the Jackson Property [C.T. 1828, Exhibit B]. During the pendency of the Illinois contempt proceedings, St. Sava filed herein its original Complaint to Quiet Title to Real Property, For Slander of Title, For Declaratory Relief and For Injunctive Relief on October 15, 1980 [C.T. 1], seeking to remove the cloud on its title to the Jackson Property caused by petitioners' recordation of the lis pendens in 1971 and subsequent recordation of a copy of the decision of the Illinois Supreme Court in 1979.

This quiet title action was stayed pending conclusion of the contempt proceedings in the Illinois Trial Court. Following the conduct of substantial discovery, on August 25, 1981, the Illinois Trial Court ruled (1) that it did *not* have jurisdiction over the persons of St. Sava's California directors and (2) that questions related to disposition of the Jackson Property were *not* before the

Illinois Trial Court [C.T. 1828, Exhibit C and C.T. 2006, Exhibit R]. In recognition of this ruling, the Diocese and the other parties to the Illinois Litigation finally executed an Agreement settling the Illinois Litigation [C.T. 2006, Exhibit M], which Agreement was approved by the Illinois Trial Court in its Stipulated Order of Dismissal of Petition for Rule to Show Cause which was filed in the Illinois Trial Court on October 26, 1982 [C.T. 2006, Exhibit L]. This agreement specifically excluded St. Sava and the Jackson Property from the Illinois Final Judgment issued in the Illinois Litigation.

St. Sava substituted new counsel [C.T. 218] and filed its First Amended Complaint to Quiet Title to Real Property, For Slander of Title, For Declaratory Relief and For Injunctive Relief on January 31, 1983 [C.T. 206]. The Diocese filed its Cross-Complaint for Declaratory Relief and to Impose Constructive Trust on March 15, 1983 [C.T. 221]. By its cross-complaint, the Diocese sought a determination that the Illinois Final Judgment issued in the Illinois Litigation is res judicata and therefore fully enforceable in California against St. Sava and the Jackson Property.

4. Trial Court Ruling on Summary Judgment

Petitioners and respondent filed cross-motions for summary judgment in 1987. By their motion, petitioners sought a determination under California Code of Civil Procedure § 437c that the 1978 Illinois Final Judgment is binding on respondent, a nonparty, as being in privity with the losing parties to the Illinois Litigation [C.T. 1509]. By its cross-motion, respondent St. Sava sought

determinations (1) that its status as a nonparty to the Illinois Litigation over whom Illinois courts could not exert jurisdiction precluded full faith and credit recognition of the Illinois Final Judgment in California under any circumstances, (2) that the August 25, 1981 order of the Illinois Trial Court dismissing contempt proceedings due to the lack of Illinois jurisdiction over St. Sava and the Jackson Property collaterally estops the Diocese from relitigating that issue in California, and (3) that disputed issues of material fact exist on the question whether nonparty respondent could be deemed to have been in privity with Bishop Dionisije, who was essentially the losing party in Illinois [C.T. 1925].

The cross-motions were heard on September 18, 1987. The trial court granted petitioners' motion and denied respondent's cross-motion by order dated October 19, 1987 [C.T. 2675]. Judgment By Court Under C.C.P. § 437c was entered on November 5, 1987 [C.T. 2732]. The trial court also denied respondent's motion for a new trial by order dated December 22, 1987 [C.T. 2895].

On September 19, 1990, the Court of Appeal issued its 42-page decision in which it reversed the summary judgment and remanded for a full trial on the merits [Appendix A]. On October 15, 1990, the Court of Appeal denied petitioners' petition for rehearing and modified one sentence of the opinion [Appendix B]. On December 12, 1990, the California Supreme Court denied petitioners' petition for review [Appendix C].

REASONS FOR DENYING THE WRIT

Despite the context of historically related litigation commencing 28 years ago in Illinois which eventually reached this Court, *this* appeal is of an ordinary, garden variety summary judgment. The record in the trial court was replete with disputed factual issues material to the parties' claims. When the trial court shirked its obligation under California C.C.P. § 437c to review that record, the Court of Appeal did so instead. The ensuing 42-page opinion merely reverses an erroneous summary judgment due to the presence of triable issues of material fact which precluded summary judgment as a matter of law.

The Petition For A Writ of Certiorari presents no special and important reasons for review under Rule 10, and should be denied.

I.

A REVIEW OF THE HISTORY OF THE ILLINOIS LITIGATION DEMONSTRATED THAT ST. SAVA WAS AN ABSENT INDISPENSABLE PARTY AND THAT ST. SAVA'S INTERESTS IN ESTABLISHING ITS CONTINUED AUTONOMY AND ENTITLEMENT TO RETAIN THE JACKSON PROPERTY WERE NOT ACTUALLY AND EFFICIENTLY REPRESENTED IN ILLINOIS, THEREBY PRECLUDING AS A MATTER OF LAW APPLICATION OF THE PRINCIPLES OF COLLATERAL ESTOPPEL AND RES JUDICATA.

A review of the decisions of this Court and the Illinois Supreme Court, together with a review of various orders of the Illinois Trial Court and the pleadings in the Illinois Litigation, demonstrates that St. Sava was neither a party nor in privity with any party to the Illinois Litigation and that the questions of St. Sava's autonomy

and continued entitlement to control of the Jackson Property were neither actually nor efficiently represented by any party to the Illinois Litigation.

On September 7, 1971, petitioners (plaintiffs in the Illinois Litigation) recorded a lis pendens in Amador County, California [C.T. 2006, Exhibit I].[3] The Jackson Property of St. Sava is described in an attachment which was also recorded, and the basic issues in the Illinois Litigation are highlighted therein. Of significance is the identification in the lis pendens of the twelve parties-plaintiff and twenty-one parties-defendant in action No. 63-1644 consolidated with action No. 63-2312 in the Circuit Court of Lake County, Illinois, County Department, Chancery Division. Although petitioners herein are identified as parties-litigant, St. Sava is not listed as a party-litigant and no one is identified as appearing in a disclosed or representative capacity on behalf of St. Sava.

In the two reported Illinois appellant decisions which were rendered before eventual hearing in the United States Supreme Court, *Serbian Eastern Orthodox Diocese v. Ocokoljich* (1966) 72 Ill.App.2d 444, 219 N.E.2d 343 [C.T. 2006, Exhibit D] and *Serbian Eastern Orthodox Diocese, Etc. v. Milivojevich* (1975) 60 Ill.2d 477, 328 N.E.2d 268 [C.T. 2006, Exhibit E], there is no mention of either St. Sava or the property located in Jackson, California or the interests of St. Sava to retain its autonomy and continued control of its own real property. In the latter opinion at page 269

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[3] As this Court recently held in *Martin v. Wilks* 490 U.S. ___, 104 L.Ed.2d 835, 845, 109 S.Ct. 2180 " . . . a party seeking a judgment binding on another cannot obligate that person to intervene; he must be joi..ed. [Citation.]"

[328 N.E.2d], the court identified the parties to the Illinois Litigation as follows:

"Plaintiffs:	Defendants:
Bishop Firmilian Ocokoljich	Bishop Dionisije Milivojevich
Bishop Gregory Udicki	Serbian Orthodox Monastery of St. Sava (monastery corporation)
Bishop Sava Vukovich	
Serbian Eastern Orthodox Diocese for the United States of America and and Canada (the religious body in this country)	Diocese for the United States of America and Canada (an Illinois religious corporation)"

In the ensuing decision of *Serbian Orthodox Diocese v. Milivojevich* (1976) 426 U.S. 696, 49 L.Ed.2d 151, 96 S.Ct. 2372 [C.T. 2006, Exhibit G], this Court noted that the petitioners are "Bishops Firmilian, Gregory Udicki, and Sava Vukovich, and the Serbian Eastern Orthodox Diocese for the United States of America and Canada (the religious body in this country). Respondents are Bishop Dionisije, the Serbian Orthodox Monastery of St. Sava, and the Servian Eastern Orthodox Diocese for the United States of America and Canada, an Illinois religious corporation" (pp. 156-157, 49 L.Ed.2d). St. Sava is identified on page 158 as one of several *"[s]imilar* secular property-holding corporations [which] were subsequently organized in New York, California and Pennsylvania." Although this Court makes numerous references in its opinion to *"respondent* property-holding corporations," St. Sava is not identified as one of them. None of the issues subject to resolution by this Court included non-party St. Sava's claim to autonomy and continued control of its property.

In paragraphs 1 and 2 of the February 22, 1978 Illinois Final Judgment [C.T. 2006, Exhibit H] of the Illinois Trial Court following remand by this Court, the parties-plaintiff and the parties-defendant are exactly the same as those identified by the Illinois appellate courts and this Court. St. Sava is not identified as a party either directly or through a disclosed representative. Although neither St. Sava nor the Jackson Property were before the Illinois Trial Court, either in person or through an authorized or disclosed representative in the caption of the pleadings or otherwise, and although their disposition and control are nowhere mentioned in the pleadings, reference to St. Sava is made in two paragraphs of the court's findings. In paragraphs 7 and 20, Judge Doran of the Illinois Trial Court states:

> "7. All assets, real, personal, tangible and intangible transferred by the Illinois religious corporation (and all those acting under and pursuant to its authority) were so transferred to it and the aforedescribed Illinois not-for-profit corporation, Shadeland Corporation and Jackson Corporation, subject to, and impressed with, the trust imposed upon those assets.
>
> "20. Since May 10, 1963, the administrators and bishops of the three reorganized dioceses have been the chief executive officers and agents of the Illinois religious corporation, the Illinois not-for-profit corporation, the Priests' Pension Fund, the New York Corporation, the Jackson Corporation, and the Shadeland Corporation. . . ."

The confusion engendered by Judge Doran's improper reference to nonparty St. Sava and to the Jackson Property was the subject of a further appeal to the

Illinois Supreme Court. In *Serbian Eastern Orthodox Diocese v. Milivojevich* (1979) 74 Ill.2d 574, 25 Ill. Dec. 629, 387 N.E.2d 285 [C.T. 2006, Exhibit J], the identities of parties-plaintiff and parties-defendant to the Illinois Litigation remain the same; still St. Sava is not included. On appeal, the Illinois defendants complained that the above-quoted portions of Judge Doran's findings in the trial court:

> "required two foreign corporations affiliated with the Diocese to turn over their assets to the plaintiffs even though *these corporations were not served with process, were not named as parties, and did not appear in the suit. One of these corporations is the St. Sava Church and Educational Mission* of the Serbian Eastern Orthodox Diocese for the United States and Canada, a not-for-profit corporation organized by Dionisije under the laws of California in May 1962 while he was still bishop of the Doicese. The corporation holds legal title to about 170 acres of land near Jackson, California, acquired from the Illinois religious corporation in December 1962" [387 N.E.2d at page 288; emphasis supplied].

The Illinois Supreme Court responded to this concern by noting on page 288 as follows:

> "The ordering portion of the judgment does not in terms direct . . . the California corporation to turn over assets to the plaintiffs."
>
> "The plaintiffs' second amended and supplemental complaint does not seek relief against the foreign corporations, and we do not consider that the ordering portion of the judgment is intended to require action on their part."

Thus, by this express concession of the Illinois Supreme Court, the interests of St. Sava in establishing its

continued autonomy and right to retain control over the Jackson Property were not addressed in the pleadings in Illinois and were not actually or efficiently represented by Bishop Dionisije in Illinois, and, thus, the Illinois Final Judgment was not binding on St. Sava.

II.

THE CALIFORNIA COURT OF APPEAL CORRECTLY INTERPRETED THE DECISIONS OF THIS COURT AND THE ILLINOIS SUPREME COURT

The Petition improperly suggests that this Court and Illinois Supreme Court specifically held that St. Sava was a mere title-holding functionary of Diocesan property without rights of its own. Petitioners raised the same invalid arguments in their various briefs filed with the California Court of Appeal. The Court of Appeal, however, carefully reviewed both the 1976 decision of this Court and the 1979 decision of the Illinois Supreme Court and held that petitioners' contentions are without merit.

This nonjoinder of St. Sava and the Jackson Property precludes any binding effect on St. Sava as an absent, indispensable and unrepresented party.

A. This Court's Statement That Resolution Of The Religious Disputes Also Determines Control Of The Diocesan Properties Is Limited to The Two Illinois Religious Corporations Which Were Parties To The Illinois Litigation And Which Were Incorporated Under The Hierarchical Provisions Of The Illinois Religious Corporations Act

Throughout their Petition, petitioners suggest that, since this Court held that resolution of the religious

disputes also determined control of the Diocesan properties specifically identified in the case, i.e., the properties held by the two Illinois religious corporations which were parties to the litigation, then so too must this Court's resolution of the religious disputes determine control of St. Sava and the Jackson Property. This Court's statement, however, was limited to the two Illinois religious corporations: (1) the Diocese and (2) the Illinois not-for-profit corporation, i.e., Monastery of St. Sava in Libertyville, Illinois. This Court's holding as to those parties was required by the provisions of Illinois law under which those entities were incorporated and by the provisions of the Diocesan Constitution.

This Court recognized that an:

> "Illinois not-for-profit Corporation, respondent Serbian Eastern Orthodox Diocese for the United States and Canada, [was organized] under Illinois laws governing incorporation of hierarchical religious organizations. In 1945, respondent not-for-profit monastery corporation, the Monastery of St. Sava, was organized under the same Illinois laws, and title to the Libertyville property was transferred to it." (49 L.Ed.2d at page 158.)

In footnote 9 on page 166 (49 L.Ed.2d), this Court again noted that "*respondent* corporations were organized under the provisions of the Illinois Religious Corporations Act governing the incorporation of religious societies that are subordinate parts of larger church organizations."

The relevant Illinois statutes were discussed by the Illinois Court of Appeal in *Serbian Eastern Orthodox v. Ocokoljich* (1966) 219 N.E. 2d 343, 350:

> "There are two methods of incorporating religious societies under the Illinois Religious Corporations Act; sections 35-46 inclusive of the Act provide for the incorporation of independent church organizations . . . ; and sections 46a-46k inclusive, provide for the incorporation of any church organization which is 'under the patronage, control, direction or supervision of any ecclesiastical body, diocesan, or like ecclesiastical officer . . . ' The Diocese in this country was incorporated in 1935 under the latter provisions."

Significantly, St. Sava incorporated in 1962 under California general corporation laws similar to sections 35-46 of the Illinois Act. St. Sava did not incorporate under the hierarchical provisions of California Corporations Code Sections 9203 and 9802, which are similar to the hierarchical provisions of sections 46-46k of the Illinois Act [C.T. 1902, ¶¶ 11, 20 and C.T. 1938, ¶ 12].

Discussing the relationship between those provisions for subordinate hierarchical incorporation in Illinois and the Diocesan Constitution in establishing that the Diocese and St. Sava Monastery were indeed hierarchical organizations under the Illinois Religious Corporations Act, the Illinois Court of Appeal held on page 348 (219 N.E.2d) as follows:

> "Article 156 [of the Diocesan Constitution] provides that all real estate and personal property of the St. Sava Monastery in Libertyville is supervised by the monastery's administration 'under the direct control of the Diocesan Bishop.'
>
> "The By-laws of the Serbian Orthodox Monastery of St. Sava – the not-for-profit corporation

> formed in 1945 – provide that . . . the corporation 'possesses its own property which cannot be disposed of, sold, mortgaged or otherwise conveyed by any Serbian Church authority, without the consent and approval of the Diocesan Council, headed by the Bishop and the Diocesan Church Conventions.'
>
> "Article V provides that the Diocesan Bishop, 'received as such by the Diocesan Council, by the Diocesan Church court and by the Diocesan Convention, is the supreme head of the Monastery . . . ' "

Accordingly, this Court held on page 169 (49 L.Ed.2d) that:

> "[A]though the Diocesan Bishop controls respondent Monastery of St. Sava and is the principal officer of respondent property-holding corporations, the civil courts must accept that consequence as the incidental effect of an ecclesiastical determination that is not subject to judicial abrogation, having been reached by the final church judicatory in which authority to make a decision resides."

Thus, this Court's decision on its face is limited to the two *respondent* property-holding corporations which were incorporated under the hierarchical religious incorporation laws of the State of Illinois. The California Court of Appeal herein correctly noted that, because St. Sava was not made a party and had asserted no jurisdictional claim, "the United States Supreme Court had no occasion to (and did not) address the issue" of jurisdiction over St. Sava (App. A at p. 19).

It is undisputed herein that St. Sava Mission Corporation consulted with legal counsel and was incorporated in 1962, expressly avoiding subordinate hierarchical

incorporation then available under California Corporations Code §§ 9203 and 9802. It is also undisputed that title to the Jackson Property was conveyed by grant deed without reservation of trust or other rights in petitioners or any other entity. On the motion for summary judgment, however, there was substantial dispute whether, as petitioners contend, Bishop Dionisije and Bishop Irinej "controlled" St. Sava, or as set forth in St. Sava's opposing papers, St. Sava and Jackson Property were autonomous and free of Diocesan control at all times after June 14, 1962.

On page 171 (49 L.Ed. 2d), this Court noted that "[w]hether corporate bylaws or other documents governing the individual property-holding corporations [i.e., St. Sava] may affect any desired disposition of the Diocesan property is not a question before us." As noted by the California Court of Appeal (App A at p. 20), *Presbytery of Riverside v. Community Church of Palm Springs* (1979) 89 Cal.App.3d 910 and *Protestant Episcopal Church v. Barker* (1981) 115 Cal.App.3d 599, establish the neutral principles of law in California for resolution of church property disputes which is substantively different from the law in Illinois. Application of these neutral principles of California law to the grant deed, Articles of Incorporation and other relevant documents mandate a finding of St. Sava's autonomy. Thus, this Court merely referred to the unique situation concerning hierarchical incorporation of religious organizations in Illinois in ruling that the resolution of the religious disputes also determines property disputes because the bishop controls the property held by entities so incorporated in Illinois. Such has no application to St. Sava which was incorporated under California

corporation laws entirely dissimilar to the Illinois non-profit corporation laws.

B. No Witness in the Illinois Litigation Testified as a Representative of St. Sava

Continuing to confuse the record of what actually occurred in the Illinois Trial Court, the petitioners claim that St. Sava's "legal spokesman", Bishop Irinej, testified in Illinois in "his capacity" as president of St. Sava's Board of Directors.

There is nothing in the trial court's record to establish that Bishop Irinej, Bishop Dionisije or any other witness testified in the Illinois Trial Court in any capacity "on behalf of St. Sava." The Court of Appeal correctly noted that Bishop Irinej's trial testimony did *not* identify St. Sava as a diocesan asset (App A at p. 28). Indeed, as this Court noted, the issues in the Illinois Litigation were the identity of the true bishop and the propriety of the reorganization of one diocese into three. Because these were the only issues being litigated, the petitioners have failed to offer, and cannot offer, any explanation why Bishop Irinej, Bishop Dionisije or anyone else would have occasion to testify in Illinois in any capacity on behalf of St. Sava. No such representative capacity is mentioned in any of the pleadings before the Illinois Trial Court and none existed.

III.

THE REMAINING ISSUES CONFIRM THE CORRECTNESS OF THE COURT OF APPEAL DECISION

In their shotgun approach to the issues, petitioners suggest holdings that courts did not make at the same

time as they ignore the realities of the record on which the California Court of Appeal based its decision. In addition to the compelling reasons discussed above for allowing St. Sava to have its day in court on remand, there are several subsidiary issues warranting denial of the Petition For Writ of Certiorari.

On the issue whether St. Sava's "representatives" were before the Illinois courts, the California Court of Appeal correctly noted that the captions of the Illinois pleadings did *not* designate either Bishop Dionisije or Bishop Irinej in corporate capacities on behalf of St. Sava (App A at p. 4). The decision not to do so was obviously that of petitioners herein as authors of those pleadings and captions, and it is too late for them to second guess their litigation tactics now.

The California Court of Appeal correctly noted that Bishop Dionisije did not raise the contention that St. Sava is autonomous for the first time until his 1979 appeal to the Illinois Supreme Court (App A at p. 6), that is, "until his battle for control of the diocesan empire had been lost" (App A at p. 24). Thus, there cannot be a finding that Bishop Dionisije "actually and efficiently" represented the interests of St. Sava in Illinois, when, as acknowledged by the Illinois Supreme Court in 1979, he did not assert the autonomy of St. Sava in his answer to pleadings filed in Illinois (App A at p. 8) and he was too late in doing so for the first time 16 years later on his fourth and final appeal.

Petitioners argue that St. Sava cannot now seek to assert its independence when it failed to do so during the Illinois Litigation. This begs the question, however, since,

as a nonparty, St. Sava was not in a position to assert anything in the Illinois Litigation and Bishop Dionisije had no incentive to do so on its behalf.

St. Sava was in an adversarial relation with Bishop Dionisije ever since he first tried to appropriate the Jackson Property for the Diocese in 1961, only to be taken to the woodshed and ordered by the Diocesan Council to convey the property to St. Sava [C.T. 1902, 1919, 1938, 2275 and 2281]. With Bishop Dionisije having no incentive to champion St. Sava's autonomy, as a matter of fundamental fairness and due process of law, St. Sava cannot be adversely affected by his self-serving actions or inactions.

Contrary to petitioners' suggestion that St. Sava's Articles of Incorporation completely bind St. Sava to the Diocese, such is true *only in matters of faith* [C.T. 2006, Ex. B]. The Articles of Incorporation are devoid of *any* requirement of temporal or property ties to the Diocese. Contrary to petitioners' suggestion that St. Sava was a mere shell which did not function separate from the Diocese, the record was replete with substantial evidence of St. Sava's autonomous activities from 1963 through the mid-1970s [C.T. 1575 and 3013-3037].

CONCLUSION

Despite the context of historically related litigation commencing 28 years ago in Illinois which eventually reached this Court, *this* appeal is of an ordinary, garden variety summary judgment. The record in the trial court was replete with disputed factual issues material to the parties' claims. When the trial court shirked its obligation

under California Code of Civil Procedure § 437c to review that record, the Court of Appeal did so instead. The ensuing 42-page opinion merely reverses an erroneous summary judgment due to the presence of triable issues of material fact which precluded summary judgment as a matter of law.

The Petition for a Writ of Certiorari should be denied since there are no special or important reasons under Rule 10 to grant review.

Respectfully Submitted,

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